

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of:

**SES AMERICOM, INC.**

For Authority to Launch and Operate a  
Satellite in the 17/24 GHz Broadcasting  
Satellite Service at 67.5° W.L.

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) File No. SAT-LOA-20080910-00173  
) Call Sign S2763  
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**PETITION TO DENY OR DEFER IN PART**

Pursuant to Section 25.154 of the Commission’s rules, 47 C.F.R. § 25.154, Star One S.A. (“Star One”) submits this Petition to Deny or Defer in Part SES Americom, Inc.’s (“SES”) application to operate over the 17/24 GHz Broadcasting-Satellite Service (“17/24 GHz BSS”) spectrum in Brazil.

On September 10, 2008, SES filed an application seeking authority to launch and operate the AMC-22 satellite at 67.5° W.L.<sup>1</sup> As described in the application, the proposed satellite will consist of three fixed beams operating over the 17/24 GHz BSS frequencies.<sup>2</sup> One fixed beam will cover the continental United States (“CONUS”), a second beam will cover Brazil (“Brazilian beam”), and a third beam will cover the rest of South America (“South American beam”).

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<sup>1</sup> File No. SAT-LOA- 20080910-00173 (filed Sept. 10, 2008) (“*SES Application*”).

<sup>2</sup> *SES Application*, Technical Appendix, at 1. The application also described a steerable beam that would cover Mexico; however, the Bureau dismissed without prejudice for refileing the portion of the application describing the steerable beam because the antenna gain contours provided for the beam did not contain the number of intervals required under Section 25.114(d)(3) of the Commission’s rules. See Letter from Robert G. Nelson, Chief, Satellite Division, International Bureau, FCC, to Karis Hastings, Counsel for SES Americom, Inc., DA 09-2278 (Oct. 23, 2009).

Star One is a satellite operator based in Brazil, serving Brazil, the rest of South America and North America. It currently operates two hybrid C- and Ku-band satellites at 65° and 70° W.L. and four C-band satellites at 68°, 75°, 84° and 92° W.L. The portion of the geostationary arc from 65° to 70° W.L. is crucial to providing ubiquitous and reliable satellite service throughout Brazil and South America. As a result, Star One is a party of interest in the disposition of this application.

Star One has no objection to SES providing service over the 17/24 GHz BSS spectrum in the United States. However, SES' application to operate over the 17/24 GHz BSS band in Brazil is premature. ANATEL has not yet established operating parameters or licensing procedures for the 17/24 GHz BSS spectrum in Brazil.<sup>3</sup> Therefore, operators seeking to provide service over this spectrum into Brazil are unable to do so at this time.

Star One respectfully requests that the Bureau deny or defer SES' request to operate its Brazilian beam because authorization of such operations would contravene the International Telecommunication Union ("ITU") Radio Regulations, undermine Brazil's authority and practical ability to establish Brazilian policies governing BSS in this band in Brazil, and provide SES an unfair competitive advantage over future operators seeking to provide service in the 17/24 GHz spectrum in Brazil once ANATEL develops Brazilian policy.<sup>4</sup>

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<sup>3</sup> Agencia Nacional de Telecomunicacoes ("ANATEL") is the Brazilian agency responsible for establishing the operating requirements and licensing procedures for satellite operations in Brazil.

<sup>4</sup> Star One takes no position on the portion of the SES application covering its South American beam.

## **I. ITU Radio Regulations**

Article 23.13 of the ITU Radio Regulations requires the Commission, “[i]n devising the characteristics of a space station in the broadcasting-satellite service,” to use “all technical means available . . . to reduce, to the maximum, the radiation over the territory of other countries unless an agreement has been previously reached with such countries.”<sup>5</sup> The ITU Radio Regulations simply implement established norms of international comity.

The Commission can comply with Article 23.13 by granting the SES application to provide BSS in the U.S., while denying or deferring the portion of the application that seeks to provide BSS in Brazil. This action would ensure that U.S. consumers will have access to SES’ BSS while eliminating the radiation that occurs into Brazil.

## **II. International Comity**

Beyond the requirement established in Article 23.13 of the ITU’s Radio Regulations, the Constitution of the ITU recognizes “the sovereign right of each State to regulate its telecommunication,”<sup>6</sup> and the Commission should do the same. If the Commission authorizes SES to operate the Brazilian beam of the AMC-22 satellite, the Commission would undermine ANATEL’s ability to develop domestic regulations for satellite operation over the 17/24 GHz BSS spectrum within Brazil. Armed with COMMISSION authority to serve Brazil and an in-orbit satellite with a Brazilian beam, SES would be in a strong position to advocate for operating requirements that suit the AMC-22, which may not be the most appropriate operating parameters for Brazil.

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<sup>5</sup> ITU Radio Regulations, Art. 23.13.

<sup>6</sup> Constitution of the International Telecommunication Union, Preamble, available at <http://www.itu.int/net/about/basic-texts/constitution/preamble.aspx>.

For example, if SES is authorized to construct AMC-22 with the Brazilian beam, its satellite will be locked into an antenna coverage pattern and antenna performance standards. Even though SES will not have authority to provide service into Brazil until it receives a license from ANATEL, the fact that it will have spent millions of dollars to construct and launch the AMC-22 will exert significant pressure on ANATEL to develop rules that accommodate the AMC-22, or at least grant SES a waiver of any rules that are ultimately developed. In either situation, the Commission would have prejudged Brazilian policy for service over the 17/24 GHz BSS spectrum in Brazil. Authorizing SES to provide BSS in Brazil before ANATEL has adopted a Brazilian framework for BSS would be regulatory imperialism.

Additionally, the Commission should respect each administration's right to develop their own internal regulatory scheme on the basis of international comity.<sup>7</sup> While the United States was successful in developing operating and licensing requirements for the 17/24 GHz BSS spectrum soon after the ITU allocation went into effect, many other nations have not yet adopted a plan for licensing BSS in this band. It would be presumptuous of the Commission to authorize a satellite capable of operating in other countries before those countries have established operating parameters for the 17/24 GHz BSS spectrum.

### **III. Competitive Parity**

Granting SES' application for BSS in Brazil also would give SES an unfair competitive advantage over other satellite operators in providing BSS in the Brazilian market. Since ANATEL has not yet established operating parameters for the 17/24 GHz BSS spectrum, no operators interested in operating in this band in Brazil may obtain an authorization to launch and

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<sup>7</sup> 48 Corpus Juris Secundum § 9 (Carolyn Bower *et al.* eds., 2004) ("Every sovereign state is bound to respect the independence of every other sovereign state.").

operate a satellite. If SES is granted authority and launches the satellite described in its application, the Commission will have created a competitive imbalance in the provision of satellite service in Brazil and the rest of South America.

#### **IV. Conclusion**

To avoid the concerns outlined above, Star One respectfully requests that the Commission deny or defer SES' request to construct and operate one fixed beam over Brazil.

Respectfully submitted,

/s/ \_\_\_\_\_

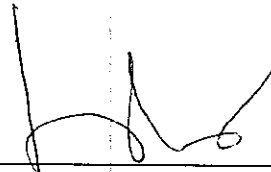
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November 23, 2009

**DECLARATION OF LUIZ OTAVIO PRATES**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on November 23rd, 2009



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Luiz Otavio Prates  
Director of Foreign Affairs  
Av. Presidente Vargas, 1.012 – 6 andar  
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Rio de Janeiro, Brazil

## CERTIFICATE OF SERVICE

I hereby certify that, on this 23<sup>rd</sup> day of November 2009, I caused a copy of the foregoing Petition to Deny to be delivered by first class mail on the following:

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/s/  
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